

CHAPTER 1
ORGANIZATION AND OPERATION
[Prior to 10/8/86, Commerce Commission[250]]

199—1.1(17A,474) Purpose. This chapter describes the organization and operation of the Iowa utilities board (hereinafter referred to as board) including the offices where, and the means by which any interested person may obtain information and make submittals or requests.

199—1.2(17A,474) Scope of rules. Promulgated under Iowa Code chapters 17A and 474, these rules shall apply to all matters before the Iowa utilities board. No rule shall in any way relieve a utility or other person from any duty under the laws of this state.

199—1.3(17A,474,476,78GA,HF2206) Waivers. In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

The burden of persuasion rests with the person who petitions the board for the waiver. If the above criteria are met, a waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199—subrule 2.2(17), or may submit their request as a part of another pleading. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if they have not already been provided to the board in another pleading. The waiver request must also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical.

The waiver shall describe its precise scope and operative period. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

This rule is intended to implement Iowa Code chapters 17A, 474, and 476 and 2000 Iowa Acts, House File 2206.

199—1.4(17A,474) Duties of the board. The utilities board regulates electric, gas, telephone, telegraph, and water utilities; and pipelines and underground gas storage. The board regulates the rates and services of public utilities pursuant to Iowa Code chapter 476; certification of electric power generators pursuant to chapter 476A; construction and safety of electric transmission lines pursuant to chapter 478; and the construction and operation of pipelines and underground gas or hazardous liquid storage pursuant to chapters 479, 479A and 479B.

199—1.5(17A,474) Organization. The utilities division consists of the three-member board, the office of the executive secretary, which heads the technical and administrative staff, and the office of general counsel.

1.5(1) *The board.* The three-member board is the policy-making body for the utilities division. The chairperson serves as the administrator of the utilities division. As administrator, the chairperson is responsible for all administrative functions and decisions.

1.5(2) *General counsel.* The duties of the general counsel are prescribed by Iowa Code section 474.10. The general counsel acts as attorney for and legal advisor of the board and its staff and represents the board in all actions instituted in a state or federal court challenging the validity of any rule, regulation or order of the board.

1.5(3) *The office of the executive secretary.* The executive secretary is appointed by the board and is its chief operating officer and responsible for all technical staff. The executive secretary is also the custodian of the board seal and all board records. The executive secretary, deputy executive secretary, or secretary's designee is responsible for attesting to the signatures of the board members and placing the seal on original board orders. The executive secretary, deputy executive secretary, or the secretary's designee is responsible for certifying official copies of board documents. The executive secretary shall also be responsible for establishing procedures for the examination of board records by the general public pursuant to the provisions of Iowa Code section 22.11 and for providing for the enforcement of those procedures.

a. The deputy executive secretary assists the executive secretary in carrying out responsibilities and is responsible for preparing the agency budget and managing the records center, technical library, and receptionist area.

b. The customer service section serves as the agency's information contact and provides customer assistance and education for both the staff and the public. The section assists customers and competitors in resolving disputes with service providers. The section monitors customer service policies and practices, provides information to the public, and advises the board on customer service quality and issues of public concern.

c. The energy section is responsible for providing the board with recommendations for appropriate actions on energy matters. The section monitors activities of gas, electric, and water service providers. It also provides analysis and recommendations on tariff filings, rate proceedings, annual fuel purchase reviews, service territory disputes, and restructuring issues. The section advises the board on issues before the Federal Energy Regulatory Commission (FERC) and U.S. Department of Energy (DOE).

d. The information technology section is responsible for the development of electronic support and technology training for the division. This includes the development of a management information system and other database applications for the division. It also maintains the board's local area network system and provides all computer and technical support services and systems for the processing of information and records, including website development and maintenance, and monitoring incoming electronic messages and requests for information.

e. The policy development section provides professional and technical support to the industry sections and the board in the areas of policy development and research. In cases before the board, the section is responsible for the review and analysis of cost of capital, cost of service, and rate design. The section is responsible for performing analysis of competitive and restructuring issues, utility management performance, least cost alternatives, energy efficiency activities, and other public policy matters.

f. The safety and engineering section is responsible for the regulation of gas and electric providers and pipeline and electric transmission and distribution companies as it relates to safety, construction, and operation and maintenance of facilities. The section reviews and processes all petitions for electric transmission line franchises under Iowa Code chapter 478 and for pipeline permits under Iowa Code chapters 479 and 479B. It also acts as an agent for the federal Department of Transportation in pipeline safety matters.

g. The telecommunications section is responsible for providing the board with recommendations for appropriate actions on telecommunications matters. The section monitors activities of telecommunications service providers. It also provides analysis and recommendations of telecommunications providers' filings, rate proceedings, and advises the board on ratemaking and restructuring issues. The section advises the board on issues before the Federal Communications Commission (FCC).

199—1.6(68B) Consent for the sale of goods and services.

1.6(1) General prohibition. An official or employee shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the board without obtaining written consent as provided in this rule.

1.6(2) Definitions.

“Employee” shall mean a full-time employee of the utilities division, the employee’s spouse and dependents, a firm in which the employee is a partner, and any corporation in which the employee holds 10 percent or more of the stock either directly or indirectly.

“Employment” means selling of goods or services to another for hire or selling goods or services.

“Official” means an individual appointed to the utilities board, that individual’s spouse or dependents, a firm in which the official is a partner, and any corporation in which the official holds 10 percent or more of the stock either directly or indirectly.

“Selling goods or services” means the receipt of compensation by an employee for providing goods or services, except the selling of goods or services shall not apply to outside employment activities that constitute an employer-employee relationship.

1.6(3) Application for consent.

a. Written consent shall be obtained at least 30 days in advance of making a sale in the following manner:

(1) For utilities division employees, by written application to the utilities board.

(2) For utilities board members, by written application to the director of the department of management.

b. The written application, filed in the utilities division record center, shall include the following information:

(1) Name of prospective employer;

(2) Term of anticipated employment;

(3) Copy of the employment contract or job description, if available;

(4) Service to be provided, detailing duties or function to be performed;

(5) Description of goods to be sold; and

(6) Direct or indirect relationship to regulated entity.

c. Consent or denial of consent shall be given in writing within 14 days of the written request and shall be retained in the utilities division record center as a public record.

1.6(4) Conditions of consent for officials. Consent shall not be given to an official unless all of the following conditions are met:

a. The selling of the good or service does not affect the official’s job duties or functions.

b. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the department.

c. The selling of the good or service does not result in the official selling of a good or service to the division on behalf of the individual, association, or corporation.

1.6(5) Conditions of consent for employees. Consent shall not be given to an employee unless all of the following conditions are met:

a. The employee’s job duties or functions are not related to the division’s regulatory authority over the individual, association, or corporation, or the selling of the good or service does not affect the employee’s job duties or functions.

b. The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the division.

c. The selling of the good or service does not result in the employee selling a good or service to the department on behalf of the individual, association, or corporation.

1.6(6) *Effect of consent.* The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual facts are consistent with those described in the application. Consent can be revoked at any time by notice to the employee or official.

1.6(7) *Participation in utility programs.* Nothing in this rule shall prohibit employees or officials of the utilities division from participating in utility programs on the same terms and conditions offered to other customers.

1.6(8) *Appeal.* An employee may grieve the decision in accordance with 581—Chapter 12 of the Iowa department of personnel rules.

1.6(9) *Notice.* Officials and employees of the utilities division shall be provided a copy of the rule. A copy of the rule shall be provided by the division to each new official and employee upon employment.

199—1.7 Rescinded, effective January 1, 1984.

199—1.8(17A,474) Matters applicable to all proceedings.

1.8(1) *Communications.* All communications to the board shall be addressed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069, unless otherwise specifically directed. Pleadings and other papers required to be filed with the board shall be filed in the office of the executive secretary of the board within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the board.

1.8(2) *Office hours.* Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

1.8(3) *Sessions of the board.* The board shall be considered in session at the office of the board in Des Moines, Iowa, during regular business hours. When a quorum of the board is present, it shall be considered a session for considering and acting upon any business of the board. A majority of the board constitutes a quorum for the transaction of business.

1.8(4) *Cross reference to rules regarding placement of docket numbers on filings, service of documents, and required number of copies.* The board's rule regarding placement of docket numbers on filings is at 199—subrule 7.4(3). The board's rule regarding service of documents is at 199—subrule 7.4(6). The board's rule regarding required number of copies is at 199—subrule 7.4(4).

199—1.9(22) Public information and inspection of records.

1.9(1) *Public information.* Any interested person may examine all public records of the board by written request or in person at the offices of the board. Public records shall be examined only at the board during the board's regular business hours, Monday through Friday from 8 a.m. to 4:30 p.m., excluding legal holidays. Unless otherwise provided by law, all public records, other than confidential records, maintained by the board shall be made available for public inspection.

1.9(2) *Definitions.*

"Confidential records." Records not available for public inspection under state law.

"Personally identifiable information." Information about or pertaining to an individual. This does not include information pertaining to corporations.

"Public records." Records of or belonging to the board which are necessary to the discharge of its duties.

1.9(3) *Inspection of records.* Subrule 1.9(4) below lists those board records which are routinely available for public inspection in the board's records center. Procedures governing requests for inspection of the records are set out in subrule 1.9(7).

1.9(4) *Board records routinely available for public inspection.* In accordance with the provisions of the State Records Management Manual, the board collects and maintains the following records that are routinely available for public inspection:

- a.* Board calendars, agenda, news releases and other information intended for the public.
- b.* Board decisions, orders, opinions and other statements of law or policy issued by the board in the performance of its function.
- c.* The records of utility rate case proceedings.
- d.* The records of rule-making proceedings.
- e.* Annual reports of the board and annual reports filed with the board by public utilities.
- f.* Tariffs filed by a public utility showing the rates and charges for its services and the rules and regulations under which the services are furnished.

- g. The records of formal utility service proceedings.
- h. Documents relating to informal and formal complaints against utilities.
- i. The records of formal utility investigations.
- j. The records of utility depreciation proceedings.
- k. Rulings on requests for waiver of board rules.
- l. The records of the board's annual review of an electric or gas utility.
- m. The records of proceedings for the issuance or amendment of an electric generator certificate.
- n. Information on public utilities' energy conservation programs.
- o. The records of formal proceedings for the issuance of an electric franchise or certificate.
- p. The records of formal proceedings for the issuance of a permit to construct a pipeline or underground gas storage facility.
- q. Petitions by a public utility for particular treatment of an extraordinary item under commission accounting rules.
- r. The records of board proceedings on matters relating to electric and pipeline safety.
- s. Public utility filings with the board relating to customer rights and remedies.
- t. All other records that are not specifically exempted from disclosure by subrule 1.9(5).

The board's files of public records listed above may contain confidential records. Any request to review confidential records must be made in accordance with subrule 1.9(8). In addition, the board's records listed in "b," "c," "e," and "h" may contain personally identifiable information.

Various legal and technical publications related to public utilities are also available for inspection by the public in the board's technical library.

1.9(5) *Records not routinely available for public inspection.* The following records are not routinely available for public inspection. The records are listed in this subrule by category, according to the statutory basis for withholding them from inspection.

a. *Materials that are specifically exempted from disclosure by statute and which the board may in its discretion withhold from public inspection.* Any person may request permission to inspect particular records withheld from inspection under this subrule. At the time of the request, the board will notify all interested parties. If the request is to review materials under subparagraphs 1.9(5)"a"(1) and 1.9(5)"a"(3), the board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. Records the commission is authorized to withhold from public inspection under Iowa law in its discretion include, but are not limited to, the following:

- (1) Trade secrets recognized and protected as such by law. Iowa Code section 22.7.
- (2) Records that represent and constitute the work product of an attorney, which are related to litigation or claim made by or against a public body. Iowa Code section 22.7.
- (3) Reports made to the board which, if released, would give advantage to competitors and serve no public purpose. Iowa Code section 22.7.
- (4) Personal information in confidential personnel records of the board. Iowa Code section 22.7.

(5) Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications could reasonably believe that those persons would be discouraged from making them to the government body if they were available for general public examination. Notwithstanding this provision:

1. The communication is a public record to the extent the person outside of government making that communication consents to its treatment as a public record.

2. Information contained in the communication is a public record to the extent it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

3. Information contained in the communication is a public record to the extent it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger. Iowa Code section 22.7.

(6) Materials exempted from public inspection under any other provisions of state law.

b. Materials that are specifically exempted from disclosure by statute and which the board is prohibited from making available for public inspection. The board is required to withhold the following materials from public inspection:

(1) Tax records submitted to the board and required by it in the execution of its duties shall be held confidential. Iowa Code section 422.20.

(2) Reserved.

c. Materials exempted pursuant to requests deemed granted by the board. Requests that material or information be withheld from public inspection that contain negotiated transportation rates and prices for natural gas supply, reservation charges for portfolio gas supply contracts, and terms and prices for all hedging activity including both financial hedges and weather-related information included in monthly purchased gas adjustment filings, annual purchase gas adjustment filings, annual purchased gas adjustment reconciliations, periodic filings related to changes in purchased gas adjustment factors, negotiated purchase prices for electric power, fuel, and transportation, customer-specific information, power supply bills in support of energy adjustment clause filings, or the financial records filed by applicants for certificates of convenience and necessity to provide competitive local exchange service shall be deemed granted pursuant to Iowa Code section 22.7(3), as a trade secret, or pursuant to Iowa Code section 22.7(6), as a report to a government agency which, if released, would benefit competitors and would serve no public purpose, or pursuant to both sections, provided that the confidential portions of the filings are identified and segregated and an attorney for the company or a corporate officer avers that those portions satisfy Iowa Code section 22.7(3) or (6), or both, as interpreted by the Iowa Supreme Court. The information shall be held confidential by the board upon filing and will be subject to the provisions of 199 IAC 1.9(8) "b"(3).

1.9(6) *Requests that materials or information submitted to the board be withheld from public inspection.* Any person submitting information or materials to the board may submit a request that part or all of the information or materials not be made available for public inspection pursuant to the following requirements.

a. Procedure. The materials to which the request applies shall be physically separated from any materials to which the request does not apply. The request shall be attached to the materials to which it applies. Each page of the materials to which the request applies shall be clearly marked confidential.

b. Content of request. Each request shall contain a statement of the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon. The facts underlying the legal basis shall be supported by affidavit executed by a corporate officer (or by an individual, if not a business entity) with personal knowledge of the specific facts. If the request is that the materials be withheld from inspection for a limited period of time, the period shall be specified.

c. Compliance. If a request complies with the requirements of paragraphs "a" and "b" of this subrule, the materials will be temporarily withheld from public inspection. The board will examine the documents to determine whether the documents should be afforded confidentiality. If the request is granted, the ruling will be placed in a public file in lieu of the materials withheld from public inspection.

d. Request denied. If a request for confidentiality is denied, the documents will be held confidential for 14 days to allow the applicant an opportunity to seek injunctive relief. After the 14 days expire, the materials will be available for public inspection, unless the board is directed by a court to keep the information confidential.

1.9(7) *Procedures for the inspection of commission records which are routinely available for public inspection.* The records in question must be reasonably described by the person requesting them to permit their location by staff personnel. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

Advance requests to have records available on a certain date may be made by telephone or by correspondence.

a. Search fees. An hourly fee will be charged for searching for requested records. The fee will be based upon the pay scale of the employee who makes the search. No search fee will be charged if the records are not located, the records are not made available for inspection, or the search does not exceed one-quarter hour in duration.

b. Written request. Written requests should list the telephone number (if any) of the person making the request, and for each document requested should set out all available information which would assist in identifying and locating the document. The request should also set out the maximum search fee the person making the request is prepared to pay. If the maximum search fee is reached before all of the requested documents have been located and copied, the requesting person will be notified. When the requesting person requests that the board mail copies of the materials, postage and handling expenses should also be included.

c. Procedure for written request. The records will be produced for inspection at the earliest possible date following a request. Records should be inspected within seven days after notice is given that the records have been located and are available for inspection. After seven days, the records will be returned to storage and additional charges may be imposed for having to produce them again.

d. Copies. Copies of public records may be made in the board's records and information center and the charge shall be the actual copying cost.

1.9(8) *Procedures for the inspection of board records which are not routinely available for public inspection.* Any person desiring to inspect board records which are not routinely available for public inspection shall file a request for inspection meeting the requirements of this subrule.

a. Content of request. The records must be reasonably described by the person requesting them, so as to permit their location by staff personnel. Requests shall be directed to the executive secretary of the board.

b. Procedure. Requests for inspection shall be acted upon as follows:

(1) If the board is prohibited from disclosing the records, the request for inspection will be denied with a statement setting forth the specific grounds for denial.

(2) If the board is prohibited from disclosing part of a document from inspection, that part will be deleted and the remainder will be made available for inspection.

(3) In the case of requests to inspect records not routinely available for public inspection under 1.9(5) "a"(1), 1.9(5) "a"(3), and 1.9(5) "c," the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection. Requests to review materials not routinely available for public inspection under any other category of paragraph 1.9(5) "a" will be acted upon by the board. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

1.9(9) *Procedures by which the subject of a confidential record may have a copy released to a named third party.* Upon a request which complies with the following procedures, the board will disclose a confidential record to its subject or to a named third party designated by the subject. Positive identification is required of all individuals making such a request.

a. In-person requests. Subjects of a confidential record who request that information be given to a named third party will be asked for positive means of identification. If an individual cannot provide suitable identification, the request will be denied.

Subjects of a confidential record who request that information be given to a named third party will be asked to sign a release form before the records are disclosed.

b. Written request. All requests by a subject of a confidential board record for release of the information to a named third party sent by mail shall be signed by the requester and shall include the requester's current address and telephone number (if any). If positive identification cannot be made on the basis of the information submitted along with the information contained in the record, the request will be denied.

Subjects of a confidential record who request by mail that information be given to a named third party will be asked to sign a release form before the records are disclosed.

c. Denial of access to the record. If positive identification cannot be made on the basis of the information submitted, and if data in the record is so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom the record pertains, the board may deny access to the record pending the production of additional evidence of identity.

1.9(10) Procedure by which the subject of a board record may have additions, dissents or objections entered into the record. An individual may request an addition, dissent or an objection be entered into a board record which contains personally identifiable data pertaining to that individual. The request shall be acted on within a reasonable time.

a. Content of request. The request must be in writing and addressed to the executive secretary of the board. The request should contain the following information:

- (1) A reasonable description of the pertinent record.
- (2) Verification of identity.
- (3) The requested addition, dissent or objection.
- (4) The reason for the requested addition, dissent or objection to the record.

b. Denial of request. If the request is denied, the requester will be notified in writing of the refusal and will be advised that the requester may seek board review of the denial within ten working days after issuance of the denial.

1.9(11) Advice and assistance. Individuals who have questions regarding the procedures contained in these rules may contact the executive secretary of the board at the following address: Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319.

1.9(12) Data processing system. The board does not currently have a data processing system which matches, collates or permits the comparison of personally identifiable information in one record system with personally identifiable information on another record system.

These rules are intended to implement Iowa Code sections 17A.3, 68B.4, 474.1, 474.5, 474.10, 476.1, 476.2, 476.31 and 546.7.

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